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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,902	07/28/2006	Takashi Sato	2006_1189A	3590

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EXAMINER	
KASHNIKOW, ERIK	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
03/04/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/587,902	SATO ET AL.	
	Examiner	Art Unit	
	ERIK KASHNIKOW	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 November 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) *10-14* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 15-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/GB/08) Paper No(s)/Mail Date *09/12/06, 07/28/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of claims 1-9 and 15-17 in the reply filed on 11/02/09 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of **50 to 150 words**. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Objections

3. Claims 5 and 6 are objected to because of the following informalities: it appears the word wherein is missing after the words "claim 1" and before the word "layers" in claim 5. The claim phrasing is slightly confusing without the word wherein. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-9 and 15-17 rejected under 35 U.S.C. 103(a) as obvious over Nakajima et al. (JP 2003-136657).

6. In regards to claims 1 and 3 Nakajima et al. teach a hollow container comprising a polyglycolic acid layer (hereinafter PGA) that has a gas barrier property (paragraph 0001). Nakajima et al. teach that the PGA comprises at least 60 wt% of the instant claimed recurring unit (paragraphs 0017 and 0018). Nakajima et al. further teach that the container may comprise additional co-laminated layers that comprise either an aromatic polyester or an aliphatic polyester (paragraphs 0042-0047). While Nakajima et al. is silent with regards to the satisfying the instantly claimed formula it has been shown that absent a showing of criticality with respect to "volume of the container as well as weight content of the PGA with regards to the entire container" (result effective variables), it would have been obvious to a person of ordinary skill in the art at the time of the invention to adjust the "volume of the container and the concentration of the PGA" through routine experimentation to values, including those presently claimed in order to achieve "a container of the desired size with the desired gas barrier, properties heat resistance and mold workability". It has been held that discovering an optimum value of

a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). It is further noted that Nakajima et al. teach that the gas barrier property may be improved by including another PGA layer, or varying the thickness of said layer (paragraph 0067). As all of these are result effective variables it would have been obvious to a person of ordinary skill in the art at the time of the invention to adjust these variables through routine experimentation in order to form a container of a desired size and gas barrier property which would also satisfy the equation set forth in the instant claim.

7. In regards to claim 2 Nakajima et al. teach that the other polyester layer may comprise polylactic acid, which has a glass transition temperature of 53°C (paragraph 0047).

8. In regards to claims 4 and 16 as stated above Nakajima et al. teach that an aromatic polyester layer and an aliphatic polyester material may be used as the thermoplastic polyester layer of Nakajima et al. Further Nakajima et al. teaches that the polyester layers may sandwich the PGA layer and do not have to comprise the same material, which would include embodiments wherein an aliphatic polyester and an aromatic polyester are both used (paragraph 0064-0066).

9. In regards to claims 5 and 16 Nakajima et al. further teach that the layers are laminated to one and other and then co-stretched (paragraph 0076).

10. In regards to claim 6 Nakajima et al. teach an embodiment wherein an aromatic polyester is laminated on both sides of the PGA layer (paragraph 0108).

11. In regards to claim 7 Nakajima et al. teach that the thermoplastic polyester layer may also comprise a regrind (recycled) resin (paragraph 0065).

12. In regards to claim 8 it is noted that Nakajima et al. do not disclose any PGA in the regrind resin, but further it has been shown that absent a showing of criticality with respect to "concentration of PGA in the regrind" (a result effective variable), it would have been obvious to a person of ordinary skill in the art at the time of the invention to adjust the "concentration of PGA in the regrind" through routine experimentation to values, including those presently claimed in order to achieve "the optimal gas barrier property of said layer". It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

13. In regards to claims 9 and 17 as all aspects of the claim (material, layer structure and wt% of the recurring unit) have been taught by the modified Nakajima et al. container then the chemical, physical and mechanical properties of said container must also be the same.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. WO 98/10932 could also have been used as the primary reference (US 6,673,403 is used as a translation of WO 98/10932).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is

(571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow
Examiner
Art Unit 1794

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794